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Alabama Court of Criminal Appeals

OCTOBER TERM, 2021-2022

CR-19-1082

Ex parte Ryan Patrick Curran

PETITION FOR WRIT OF CERTIORARI

(In re: Ryan Patrick Curran v. State of Alabama)

**Appeal from Covington Circuit Court
(CC-18-305; CC-18-306; CC-18-307; CC-18-308)**

McCOOL, Judge.

Ryan Patrick Curran seeks certiorari review of the Covington Circuit Court's partial denial of his petition for expungement.

Facts and Procedural History

In March 2015, Curran was charged with one nonviolent felony, three misdemeanors, and a violation. It is undisputed that all five charges arose from one traffic stop. Each charge was assigned a separate district-court case number. In July 2016, all the charges were dismissed with prejudice.

In June 2018, Curran filed a single petition in the Covington Circuit Court seeking to expunge the records relating to all five charges; however, he paid a separate filing fee for each charge, and each charge was assigned a separate circuit-court case number – CC-18-304, CC-18-305, CC-18-306, CC-18-307, and CC-18-308. The prosecuting authority did not file an objection to the petition. In July 2020, the circuit court granted the petition as to one charge – CC-18-304 – but denied the petition as to the other four charges without conducting a hearing. In each of the four orders denying expungement, the court stated that it had "previously granted a petition for expungement of records submitted by the petitioner in CC-18-304."

Standard of Review

"This Court has recognized:

"There is no provision in Chapter 27 of Title 15, "Expungement," for a direct appeal of the denial of a petition for expungement. Rather, § 15-27-5(c), Ala. Code 1975, states: "The ruling of the court shall be subject to certiorari review and shall not be reversed absent an abuse of discretion." Levins v. State, 285 So. 3d 250 (Ala. Crim. App. 2016).'

"Bell v. State, 217 So. 3d 962, 963 (Ala. Crim. App. 2016). Further, '[a] judge abuses his discretion only when his decision is based on an erroneous conclusion of law or where the record contains no evidence on which he rationally could have based his decision.' Albarran v. State, 96 So. 3d 131, 198 (Ala. Crim. App. 2011)."

Ex parte Steinberg, 294 So. 3d 835, 838 (Ala. Crim. App. 2019).

Discussion

In his petition to this Court, Curran argues that the circuit court abused its discretion when it failed to grant the expungement petition as to all five charges. Specifically, Curran argues that all five charges constitute a single "case" for purposes of the expungement statutes – § 15-27-1 et seq., Ala. Code 1975 – and that the trial court did not have discretion over the number of "cases" that may be expunged until after the first "case" is expunged.

In Ex parte Steinberg, this Court explained:

"In the present cases, there is no evidence indicating that the prosecuting authority or a victim filed an objection to

the granting of the petitions for expungement or that a hearing was held. Section 15-27-5(d)[, Ala. Code 1975,] is the only subsection that contemplates that specific situation. Section 15-27-5(d) states:

"If no objection to a petition is filed by the prosecuting authority or victim, the court having jurisdiction over the matter may rule on the merits of the petition without setting the matter for hearing. In such cases, the court shall grant the petition if it is reasonably satisfied from the evidence that the petitioner has complied with and satisfied the requirements of this chapter. The court shall have discretion over the number of cases that may be expunged pursuant to this chapter after the first case is expunged."

"(Emphasis added.)

"Thus, in this particular situation -- when no objection is filed and no hearing is held -- the circuit court is required to grant the petition in the first case 'if it is reasonably satisfied from the evidence that the petitioner has complied with and satisfied the requirements of this chapter,' i.e., Chapter 27 of Title 15.

"Furthermore, we note that, on its face, § 15-27-5(d) gives the circuit court 'discretion over the number of cases that may be expunged pursuant to this chapter after the first case is expunged.' That wording further supports our conclusion that the court does not have discretion before the first case is expunged, but that language clearly gives the court discretion after the first case is expunged. Therefore, in sum, when no objection is filed, the circuit court must grant the petition if it is reasonably satisfied that the petitioner has satisfied the requirements of Chapter 27 of Title 15, but the court has discretion over the number of cases that may be expunged after the first case is expunged."

294 So. 3d at 842.

In the present situation, there is no allegation that Curran did not satisfy the requirements of Chapter 27 of Title 15. In fact, the circuit court must have been reasonably satisfied that Curran satisfied those requirements in order to grant the expungement petition as to one charge. Further, as in Steinberg, no objection was filed by the prosecuting authority and no hearing was held. Thus, the argument in the present situation hinges on whether the five charges, which arose from one incident but are separate charges that were given separate case numbers in court, are separate "cases" for the purposes of the expungement statutes. If the five charges constitute one "case," the circuit court must grant the petition as to all five charges. If the five charges constitute separate "cases," the circuit court had discretion over the number of cases that may be expunged after the first case is expunged.

Initially, we recognize that the legislature has amended Chapter 27 of Title 15 since Steinberg was decided and since the trial court ruled on Curran's petition for expungement. At the time the trial court ruled on

Curran's petition for expungement and at the time Steinberg was decided, § 15-27-5(d), Ala. Code 1975, provided:

"If no objection to a petition is filed by the prosecuting authority or victim, the court having jurisdiction over the matter may rule on the merits of the petition without setting the matter for hearing. In such cases, the court shall grant the petition if it is reasonably satisfied from the evidence that the petitioner has complied with and satisfied the requirements of this chapter. The court shall have discretion over the number of cases that may be expunged pursuant to this chapter after the first case is expunged."

(Emphasis added.)

However, effective July 1, 2021, § 15-27-5(d), Ala. Code 1975, provides:

"If no objection to a petition is filed by the prosecuting authority or victim, the court having jurisdiction over the matter shall rule on the merits of the petition without setting the matter for hearing. In such cases, the court shall grant the petition if it is reasonably satisfied from the evidence that the petitioner has complied with and satisfied the requirements of this chapter."

(Emphasis added.)

Thus, it appears that after July 1, 2021, if no objection is filed, the trial court must rule on the merits of the petition without setting the matter for a hearing, and because the last sentence of § 15-27-5(d) was

removed, the trial court no longer has discretion over the number of cases that may be expunged after the first case is expunged.

Furthermore, effective July 1, 2021, the legislature added § 15-27-2.1, Ala. Code 1975, which provides, in pertinent part:

"(a)(1) A person may be granted unlimited expungements pursuant to subdivisions (a)(1) through (a)(5) and (a)(7) and (a)(8) of Section 15-27-1, subdivisions (a)(1) through (a)(5) and (a)(7) and (a)(8) of Section 15-27-2, and subsection (b) of Section 15-27-2.

"(2) A person may only be granted one expungement pursuant to subsection (c) of Section 15-27-2.

"(3) A person may only be granted two expungements pursuant to subdivision (a)(6) of Section 15-27-1, subsection (b) of Section 15-27-1, and subdivision (a)(6) of Section 15-27-2.

"(b) For the purposes of subsection (a), one expungement shall include all charges or convictions stemming from the same arrest or incident."¹

(Emphasis added.)

Nevertheless, in the present situation, we review the trial court's denial of Curran's petition for expungement under the law in effect at the

¹Section 15-27-1 concerns the expungement of records relating to misdemeanor offenses, traffic violations, and municipal-ordinance violations. Section 15-27-2 concerns the expungement of records relating to felony offenses.

time the trial court made its decision. At that time, the trial court had discretion over the number of "cases" that may be expunged after the first "case" is expunged, and the term "case," as used in the expungement statute, had not been defined. Specifically, it was not clear whether the term "case" included all charges or convictions arising from the same arrest or incident.

In Steinberg, this Court noted:

"In construing the expungement statutes, we are guided by the following principles of statutory construction:

""[I]t is this Court's responsibility in a case involving statutory construction to give effect to the legislature's intent in enacting a statute when that intent is manifested in the wording of the statute. Bean Dredging[, LLC v. Alabama Dep't of Revenue], 855 So. 2d [513] at 517 [(Ala. 2003)].... ""If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect."" Pitts v. Gangi, 896 So. 2d 433, 436 (Ala. 2004) (quoting DeKalb County LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 275 (Ala. 1998), quoting in turn earlier cases). In determining the intent of the legislature, we must examine the statute as a whole and, if possible, give effect to each section.

Employees' Retirement Sys. of Alabama v. Head, 369 So. 2d 1227, 1228 (Ala. 1979)."

"Ex parte Exxon Mobil Corp., 926 So. 2d 303, 309 (Ala. 2005). Further,

"'"when determining legislative intent from the language used in a statute, a court may explain the language, but it may not detract from or add to the statute. Siegelman v. Chase Manhattan Bank (USA), Nat'l Ass'n, 575 So. 2d 1041, 1045 (Ala. 1991). When the language is clear, there is no room for judicial construction. Employees' Retirement System [v. Head], 369 So. 2d [1227,] 1228 [(Ala. 2002)]."

"Water Works & Sewer Bd. of Selma v. Randolph, 833 So. 2d 604, 607 (Ala. 2002)."

"Ex parte Birmingham Bd. of Educ., 45 So. 3d 764, 767 (Ala. 2009).

"Further,

"'"ambiguous criminal statutes must be narrowly interpreted, in favor of the accused." United States v. Herring, 933 F.2d 932, 937 (11th Cir. 1991). "[I]t is well established that criminal statutes should not be 'extended by construction.'" Ex parte Evers, 434 So. 2d 813, 817 (Ala. 1983)'" D.A.D.O. v. State, 57 So. 3d 798, 802 (Ala. Crim. App. 2009) (quoting Carroll v. State, 599 So. 2d 1253, 1264 (Ala. Crim. App. 1992), *aff'd*, 627 So. 2d 874 (Ala. 1993)). "'No person is to be made

subject to penal statutes by implication and all doubts concerning their interpretation are to predominate in favor of the accused. Fuller v. State, [257 Ala. 502, 60 So. 2d 202 (1952)].
""D.A.D.O., 57 So. 3d at 803 (quoting Hankins v. State, 989 So. 2d 610, 618 (Ala. Crim. App. 2007)).'

"Collier v. State, 212 So. 3d 268, 273 (Ala. Crim. App. 2015). On the other hand, procedural or remedial statutes are liberally construed to effectuate their objectives. See Brasher v. State, 555 So. 2d 184, 187 (Ala. Crim. App. 1988) ('Procedural statutes, on the other hand, should be liberally construed with a view to the effective administration of justice and to effectuate their purpose.').

".... Thus, because the statute is unclear, this Court must examine the statute as a whole and attempt to give effect to the legislature's intent in enacting the statute. Regardless of whether the [expungement] statute is considered penal, procedural, or remedial, the statute must be construed in favor of the petitioners ... because they are 'the accused' concerning the criminal charges they are attempting to have expunged and because the objective of the statute is to give individuals in the petitioners' position, i.e, individuals charged with a nonviolent felony or misdemeanor who have had the charge dismissed with prejudice, the opportunity to expunge their record of the criminal charges."

Ex parte Steinberg, 294 So. 3d at 841-42.

In the present situation, the term "case" is not defined in the expungement statute. Thus, this Court must attempt to give effect to the legislature's intent in using that term and must construe any ambiguities in favor of Curran.

This Court acknowledges persuasive authority that defines the term "case" as an individual charge or a particular numbered legal proceeding; however, most of those decisions construed the statute at issue in favor of the individual seeking expungement. See State v. Doe, 903 N.W.2d 347 (Iowa 2017) (rejecting the State's argument that the term "case," as used in the statute governing expungement, means all the charges arising out of a single transaction or set of circumstances and holding that the term "case" means a single numbered legal proceeding); see also State v. L.W., 350 S.W.3d 911 (Tenn. 2011) (rejecting the State's argument that the word "case" in the expungement statute refers to the entire criminal proceeding that is brought by filing an indictment or presentment, not the individual counts within it).

Further, there is ample persuasive authority that defines the term "case" to include all charges or convictions arising from the same arrest or incident. See, e.g., State v. Bobola, 168 N.H. 771, 138 A.3d 519, 525 (2016) (holding that alternative charges with separate docket numbers were part of the same "case"), 11 Del. C. § 4372(c)(1) (Delaware's expungement statute defining "case" as "a charge or set of charges related to a complaint or incident that are or could be properly joined for

prosecution"), Seals v. State, 311 Ga. 739, 860 S.E.2d 419, 423 (2021) (stating that, in determining what it means for a "case" to become "no longer pending in the court below," "[t]he most natural ordinary meaning of 'case' is a single proceeding, regardless of whether the proceeding involves one or multiple counts").

Also, Black's Law Dictionary does not limit the definition of "case" to an individual charge. Instead, Black's Law Dictionary 266 (11th ed. 2019) defines "case" as "[a] civil or criminal proceeding, action, suit, or controversy at law or in equity <the parties settled the case>."

In determining whether the term "case" in § 15-27-5 means all the charges or convictions arising from the same incident or means an individual charge, perhaps most convincing is the fact that the legislature repeatedly used the term "charge" elsewhere in Chapter 27 of Title 15. See, e.g., §§ 15-27-1 and 15-27-2, Ala. Code 1975. The Alabama Supreme Court has stated: "'[W]hen the legislature uses certain language in one part of the statute and different language in another, the court assumes different meanings were intended.... The use of different terms within related statutes generally implies that different meanings were intended.'" Trott v. Brinks, Inc., 972 So. 2d 81, 85 (Ala.2007)

(quoting 2A Norman Singer, Sutherland on Statutes and Statutory Construction § 46:06, at 194 (6th ed. 2000) (footnotes omitted)). Thus, in the present situation, this Court must assume that when the legislature used the word "charge" in one part of Chapter 27 of Title 15 and the word "case" in another part, different meanings were intended.

In the present situation, this Court must construe any ambiguities in the expungement statutes in favor of the petitioner, and because the legislature used the terms "charge" and "case" separately in Chapter 27 of Title 15, we must assume that those terms have different meanings. Therefore, this Court holds that the term "case" in § 15-27-5 means all the charges or convictions arising from the same arrest or incident, not an individual charge. Because all five charges that Curran petitioned to have expunged arose from one incident, those charges constitute one "case." Because the trial court did not have discretion over the number of cases that may be expunged until after the first case was expunged, the trial court abused its discretion when it granted the petition for expungement as to one charge but denied the petition as to the other four charges. Accordingly, we reverse the trial court's judgment and remand the cause for that court to grant the petition as to all five charges.

Conclusion

Based on the foregoing, we reverse the trial court's judgment and remand the cause for proceedings consistent with this opinion.

REVERSED AND REMANDED.

Windom, P.J., and Kellum and Minor, JJ., concur. Cole, J., concurs in the result.